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10/840,110	05/05/2004	Martin Weel	1116-065	7277
71739 7590 10/06/2008 CONCERT TECHNOLOGY AND WITHROW & TERRANOVA 100 REGENCY FOREST DRIVE , SUITE 160 CARY, NC 27518				
EXAMINER				
DUONG, OANH L				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

1. Applicant's arguments filed 09/23/2008 have been fully considered but they are not persuasive.

In the remarks, Applicant argued in substance that

(A) Chislenko fails to teach or suggest selecting a matching profile as required by Applicant's claimed invention.

As to point (A), the statement "to select a matching user profile from the plurality of user profiles" in claim 1 is interpreted to be statement of intended use since no actual selecting step is claimed. It is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

(B) Chislenko fails to teach or suggest selection of a playlist of a matching user associated with the matching user profile for delivery to the media player device.

As to point (B), the statement "for delivery to the media player device" is considered a statement of intended use. Chislenko does teach selection of a playlist of a matching user associated with the matching user profile (*i.e., commend/select music items/playlist (of users) if a user's profile has high correlation with another user's profile in grouping of the music items, col. 6 lines 11-13 and col. 11 lines 14-17*).

(C) Van Tam fails to teach or suggest "comparing each of a plurality of a user profile with a target user profile of a first user associated with the media player device to select a matching user profile from the plurality of user profiles.

As to point (C), the statement "select a matching user profile from the plurality of user profiles" is considered a statement of intended use since no actual selecting step is claimed. Van Tam does teach comparing each of a plurality of a user profile with a target user profile of a first user associated with the media player device (i.e., *"a user's preference profile is compared with profiles of similar users or groups of user"*, page 1 paragraph [0004]).

(D) Van Tam fails to teach or suggest effecting delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device.

As to point (D), According to Applicant's specification in page 1 paragraph [0003], a playlist is a list of a user's favorite selections. Van Tam's list is indicative of user's preferences including list of recorded items that are currently available for viewing (page 2 paragraphs [0014]-[0017]). Van Tam further teaches the invention finds application with digital music or any type of digital media (page 2 paragraph [0011]). Therefore, Van Tam's list is equivalent to playlist as defined in Applicant's specification. As a result, Van Tam does teach effecting delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device (i.e., *transmit/delivery a list of matching items to A*, page 3 paragraph [0034]).

As a result, the cited prior art does disclose method and device as broadly claimed by the applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior art.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to OANH DUONG whose telephone number is (571)272-3983. The examiner can normally be reached on Monday- Friday, 9:30PM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Oanh Duong/
Primary Examiner, Art Unit 2155

